

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL S. MAPES, MILTON)	Civil No. 8:07cv77
PETERSEN IV, BRIAN LEICHNER,)	
DAVID MOHR and DAVID STADING,)	
)	
Plaintiffs,)	INDEX OF EVIDENCE IN SUPPORT
)	OF MOTION TO WITHDRAW AS
v.)	COUNSEL FOR DEFENDANT
)	
WELLINGTON CAPITAL GROUP, INC.,)	
)	
Defendant.)	

Michael J. Mooney, Robert A. Mooney, Elizabeth M. Callaghan and Gross & Welch, P.C., L.L.O. hereby submit the following evidence in support of Motion to Withdraw as Counsel for Defendant:

1. Affidavit of Elizabeth M. Callaghan.
2. Affidavit of Robert A. Mooney.

Dated this 29th day of September, 2008.

WELLINGTON CAPITAL GROUP, INC.,
Defendant

By /s/Elizabeth M. Callaghan
Michael J. Mooney, #12886
Robert A. Mooney #21304
Elizabeth M. Callaghan, #22238
GROSS & WELCH, P.C., L.L.O.
2120 South 72nd Street, Suite 1500
Omaha, Nebraska 68124
402-392-1500
Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of September, 2008, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system which sent notification of such filing upon all parties who filed an appearance or motion by electronic filing in this case:

John P. Passarelli
James M. Sulentic
1650 Farnam Street
Omaha, NE 68102
john.passarelli@kutakrock.com
james.sulentic@kutakrock.com

/s/Elizabeth M. Callaghan

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MICHAEL S. MAPES, MILTON)	Civil No. 8:07cv77
PETERSEN IV, BRIAN LEICHNER,)	
DAVID MOHR and DAVID STADING,)	
)	
Plaintiffs,)	AFFIDAVIT OF
)	ELIZABETH M. CALLAGHAN IN
v.)	SUPPORT OF MOTION TO
)	WITHDRAW
WELLINGTON CAPITAL GROUP, INC.,)	
)	
Defendant.)	
STATE OF NEBRASKA)	
) ss.	
COUNTY OF DOUGLAS)	

I, Elizabeth M. Callaghan, being first duly sworn and upon oath, state and aver as follows:

1. I am an attorney licensed to practice law in the State of Nebraska and before this Court and am counsel of record for the Defendant, Wellington Capital Group, Inc. The matters contained in this Affidavit are based upon my personal knowledge.

2. I was retained to provide a defense to Wellington Capital Group, Inc. shortly after the Complaint was filed in this matter in early 2007. My primary contact during 2007 was Aaron Bates, who, at that time, was an attorney for Wellington Capital Group in Orlando, Florida. Mr. Bates retained my firm and provided us with information to prepare a defense on behalf of Wellington.

3. Throughout 2007, when we needed information or direction regarding handling of discovery in this case, I would contact Aaron via e-mail or telephone and he nearly always responded within twenty-four hours of my request.

EXHIBIT

4. Beginning in February, 2008, my contact with Aaron Bates became sporadic. Throughout May, 2008, client contact between our office and Wellington became strained, with Bates becoming less responsive. Moreover, we recently learned about changes in our client's status, including but not limited to various criminal and civil proceedings against Frank Amodeo, Wellington's sole officer and director, via online versions of the local Florida newspaper or from Plaintiffs' counsel, rather than from our client. The day before Mr. Amodeo's deposition was scheduled to take place, Mr. Bates informed our office that Mr. Amodeo would not be appearing. We were given no reason from Mr. Bates as to why Mr. Amodeo would not be appearing, being told only that a valid legal basis existed for the same and that Frank and his personal counsel would appear and defend any motion for sanctions. This did not occur.

5. Our client has failed and refused throughout May, June, July, August, and September of this year to keep us apprised of changes in the status of its officers and directors, and we have been unable to contact or communicate with Mr. Amodeo or anyone on behalf of Wellington.

6. Prior to the last hearing on Plaintiffs' Motion for Sanctions, I was informed via e-mail that Aaron Bates is no longer our contact with respect to authority or information regarding Wellington. I have since been informed by Aaron Bates that he no longer represents Wellington in any matters. In addition, we have not been apprised of the status of Mr. Amodeo's competency, nor have we received a response to inquiries we directed at his guardian's counsel, Catherine Davey, other than a voicemail from Ms. Davey indicating that she no longer represents the guardian or anyone with regard to Frank Amodeo. Further, my voicemails to Mr. Amodeo's criminal attorney, Butch Slaughter, have not been returned. As matters presently stand, we have no

contact with anyone at Wellington who has authority to direct our actions as their counsel or who has authority to respond to our requests for assistance, making further representation of Wellington impossible.

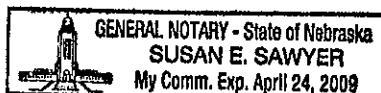
7. Contemporaneous with the filing of counsel's motion to withdraw, we have sent correspondence to the last known address for Frank Amodeo's criminal counsel, Butch Slaughter, with instructions he inform Amodeo of counsel's intention to withdraw from this case. In addition, correspondence providing information of Gross & Welch's intent to withdraw from representation of Wellington in this matter was sent to Wellington's last known registered agent. Finally, as a courtesy, Aaron Bates was notified via telephone on this date of our intent to withdraw as counsel for Wellington.

FURTHER AFFIANT SAYETH NOT.

Elizabeth M. Callaghan
Elizabeth M. Callaghan, #22238

SUBSCRIBED and sworn to before me by Elizabeth M. Callaghan this 17 day of September, 2008.

Susan E. Sawyer
Notary Public



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PETERSEN IV, BRIAN LEICHNER,)
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)

Plaintiffs,) AFFIDAVIT OF
) ROBERT A. MOONEY

v.)
)

WELLINGTON CAPITAL GROUP, INC.,)
)

Defendant.)
)

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

COMES NOW the Affiant, Robert A. Mooney, being first duly sworn and upon oath, state and aver as follows:

1. I am an attorney licensed to practice law in the State of Nebraska and before this Court and am counsel of record for the Defendant, Wellington Capital Group, Inc. The matters contained in this affidavit are based upon my personal knowledge.

2. I was retained to provide a defense to Wellington Capital Group, Inc. shortly after the complaint was filed in this matter in early 2007. My primary contact during 2007 was Aaron Bates, who, at that time, was an attorney for Wellington Capital Group in Orlando, Florida. Mr. Bates retained my firm and provided us with information to prepare a defense on behalf of Wellington.

3. Throughout 2007, when we needed information or direction regarding handling of discovery in this case, I would contact Aaron via e-mail or telephone and he nearly always responded within twenty-four hours of my request.

EXHIBIT

2

4. Beginning in February, 2008, my contact with Aaron Bates became sporadic. When I requested information from Aaron so that I could prosecute discovery in this case, I found him to be non-responsive. When issues arose regarding the taking of Frank Amodeo's deposition, I continued to contact Aaron Bates, and advised him that sanctions would likely issue if Amodeo failed to appear for his deposition.

5. Throughout May, 2008, client contact between our office and Wellington became strained, with Bates becoming less responsive. Moreover, we recently learned about changes in our client's status, including but not limited to various criminal and civil proceedings against Frank Amodeo, Wellington's sole officer and director, via online versions of the local Florida newspaper or from Plaintiffs' counsel, rather than from our client. The day before Mr. Amodeo's deposition was scheduled to take place, Mr. Bates informed our office that Mr. Amodeo would not be appearing. We were given no reason from Mr. Bates as to why Mr. Amodeo would not be appearing, being told only that a valid legal basis existed for the same and that Frank and his personal counsel would appear and defend any motion for sanctions. This did not occur.

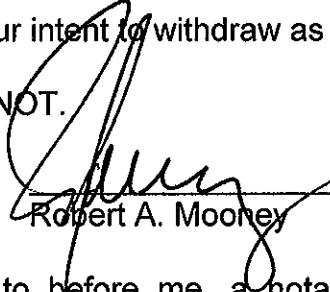
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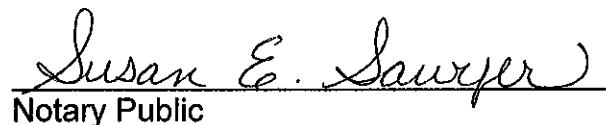
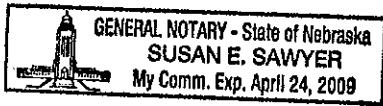
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FURTHER AFFIANT SAYETH NOT.



Robert A. Mooney

SUBSCRIBED AND SWORN to before me, a notary public in the State of Nebraska, this 17 day of September, 2008.



Susan E. Sawyer
Notary Public